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LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION
The 28th August 2010

No. 7287–li-1-BH-72/1996-LE.–In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award dated the 28th June 2010 in I. D. Case No.79/1997 of the Presiding Officer, Labour Court, Bhubaneswar to whom the industrial dispute between the Management of the Executive Engineer, Mayurbhanj Irrigation Division, Baripada and its Workman Shri Sanatan Nayak was referred to for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE LABOUR COURT, BHUBANESWAR
INDUSTRIAL DISPUTE CASE No.79 of 1997
Dated the 28th June 2010

Present :

Shri S. K. Dash,
Presiding Officer, Labour Court,
Bhubaneswar.

Between :

The Management of the Executive Engineer . . . First party–Management
Mayurbhanj Irrigation Division, Baripada.

And

Its Workman, Shri Sanatan Nayak . . . Second party–Workman

Appearances :

First party–Management	. . .	Shri B. K. Jena, Assistant Engineer
Second party Workman himself	. . .	Shri S. Nayak

A W A R D

The Government of Orissa in exercise of powers conferred by sub-section (5) of Section 12, read with clause (c) of sub-section (1) of Section 10 of the Industrial Disputes Act have referred the matter in dispute to this Court vide Order No.10071–li-1-BH-72/1996, 1/LE., dated 13-8-1997 of the Labour & Employment Department, Bhubaneswar for adjudication.

2. The terms of reference is as follows :

“Whether the action of the Executive Engineer, Mayurbhanj Irrigation Division, Baripada in retiring Shri Sanatan Nayak, Mixture Operator with effect from 31-1-1993 vide his Order No.3352, dated 29-9-1995 is legal and/or justified ? If not, to what relief Shri Nayak is entitled ?”

3. The case of the workman in brief is that he was initially joined under the management in Kalo Irrigation Subdivision, Udala as Concrete Mixture Operator with effect from 1-3-1975. After completion of Kalo Irrigation Project the workman was transferred to Sunei Irrigation Project, Udala. Subsequently such two Subdivisions came under the control of the present management. The workman had continued in his service up to 28-9-1995. But all of a sudden the management without any prior intimation served retirement order on 29-9-1995, on the workman stating therein that the workman had retired retrospectively with effect from 31-1-1993. But the date of birth of the workman was 19-1-1938 for which being a workman in Government service he is to retire from service in the year 1998 after completion of 60 years. The workman approached the management for rectifying the mistake and to allow him to continue in service up to 19-1-1998. But the management did not pay any heed to his request. The management terminated the service of the workman by way of premature retirement. The date of birth of the workman is 19-1-1938 in view of the horoscope, voter list and Identity Card issued by the authority. The workman has no School Leaving Certificate in support of his age. So the action of the management is illegal for which the workman raised an industrial dispute before the labour authority and when the conciliation failed, this I. D. Case has been initiated and the workman has prayed for reinstatement in service with full back wages.

4. The management appeared and filed the written statement denying the plea of the workman. According to him the workman joined in the service on 1-3-1975 as Helper under work-charged establishment. Thereafter he has been promoted to the post of Concrete Mixture Operator with effect from 6-7-1978 F.N. He continued in service up to 29-9-1995. On scrutiny of the records and Service Book it is found that the date of birth of the workman as 19-1-1933 has been tampered and manipulated as 19-1-1938. The seniority list published the date of birth has been mentioned as 19-1-1933 which was duly acknowledged by the workman. When his date of birth is 19-1-1933 he is supposed to retire on 31-1-1993 after completion of 60 years of age. As such action has been taken to retire him immediately as per the instruction of the higher authority. Before issuing the retirement order the workman was asked to justify the date of birth by submitting the testimonials if any, but the workman intentionally remained silent and has not produced any testimonials in support of his claim. After proper verification of records and as per instruction of the higher authority action has been taken to retire the workman from service basing on the actual date of birth with effect from 19-1-1933 retrospectively with effect from 31-1-1993. In this background the action of the management is legal and the workman is not entitled to get any relief as prayed for.

5. In view of the above pleadings of the parties, the following issues have been settled.

ISSUES

- (i) Whether the action of the Executive Engineer, Mayurbhanj Irrigation Division, Baripada in retiring Shri Sanatan Nayak, Mixture Operator with effect from 31-1-1993 vide his Order No. 3352, dated 29-9-1995 is legal and/or justified ?

(ii) If not, to what relief Shri Nayak is entitled ?

6. In order to substantiate his plea the workman has examined himself as W. W. 1 and proved the document marked as Ext. 1. Similarly the management has examined one Assistant Engineer as M. W. 1 and proved the documents marked as Exts. A to H in support of his case.

FINDINGS

7. Issue Nos. (i) and (ii) :— Both the issues are taken up together for discussion for convenience.

W. W. 1 deposes that he joined in service on 1-3-1975 under Kalo Irrigation Project. His date of birth is 1938. But he was relieved from service with effect from 31-1-1993 showing his age as 19-1-1933. So he was illegally retired from service. So he raised an industrial dispute. He has proved the xerox copy of Office Order No. 17 of 1995-1996 which is his retirement order. M. W. 1 deposes in support of his pleading. The xerox copy of first page of Service Book of the workman has been marked as Ext. C which discloses that the date of birth of the workman has been over-written as 1938 i.e. '8' has been overwritten. The xerox copy of the seniority list of work-charged staff of the management has been marked as Ext. D and the relevant entry in Ext. D in respect of the workman marked as Ext. D/1 which clearly discloses that the date of birth of the workman has been mentioned as 19-1-1933. The workman has received the same by putting his signature. The duplicate Service Book of the workman is marked as Ext. F in which the date of birth has been overwritten as 19-1-1938. The positive photograph along with the negative sent by the C. I. D., Crime Branch, handwriting of Expert Bureau, Bhubaneswar in respect of tampering the date of birth of the workman in the Service Book marked as Ext. D. So basing on the materials of the case record it is submitted by the workman that his date of birth is 19-1-1938, but he has been allowed to retire from service illegally by the authority claiming his date of birth is 19-1-1933. The workman has not proved any document in support of his age by horoscope, voter list and identity card though claimed. The opinion of the Government examiner of questioned documents, C. I. D., C. E. (HWB), Rasulgarh, Bhubaneswar opined that the original figure representing date of birth present inside the red enclosed portion marked by him as X was '19-1-1933' which has subsequently been changed to '19-1-1938' by addition of strikes to the last digit '3'. Such opinion though filed not proved, but Court can take the judicial notice. Perused it with the original Service Book available. In Ext. 3 there is an endorsement that this stroke has been added subsequently which relates to the overwriting portion '3' as '8'. It has been argued by the workman that he has not manipulated and tampered such date of birth in the Service Book and the management is the custodian of the same. But it is an admitted fact that the date of birth has been tampered and manipulated who tampered or manipulated is not relevant but the fact remains that it was tampered and manipulated. So basing on such document the workman cannot claim his date of birth to be 19-1-1938 without any conclusive proof. So now on careful consideration of all the materials available in the case record I am of the opinion that the plea of the workman has no force at all. On the other hand, the date of birth is found to be 1938 as per Service Book and he has duly retired from service retrospectively with effect from 31-1-1993 and the action of the management is legal and justified. The workman is not entitled to get any relief as prayed for. Both the issues are answered accordingly.

8. Hence ordered :

The action of the Executive Engineer, Mayurbhanj Irrigation Division, Baripada in retiring Shri Sanatan Nayak, Mixture Operator with effect from 31-1-1993 vide his Order No. 3352, dated 29-9-1995 is legal and justified. The workman Shri Nayak is not entitled to get any relief as prayed for.

The reference is answered accordingly.

Dictated and corrected by me.

S. K. DASH
28-6-2010
Presiding Officer
Labour Court
Bhubaneswar

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28-6-2010
Presiding Officer
Labour Court
Bhubaneswar

By order of the Governor
P. K. PANDA
Under-Secretary to Government